



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

E. 6
6/23/98

JUN 23 1998

EPA Region 5 Records Ctr.



273623

REPLY TO THE ATTENTION OF

SR-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John V. Byl
Warner Norcross & Judd
900 Old Kent Building
111 Lyon St., N. W.
Grand Rapids, MI 49503-2487

Re: **SPECIAL NOTICE OF LIABILITY**
North Bronson Industrial Superfund Site
Branch County, Michigan

Dear Mr. Byl:

This letter follows a general notice letter that was issued to the *City of Bronson* on April 22, 1986 in connection with the North Bronson Industrial Area Site (the "Site"). The general notice letter notified the *City of Bronson* of its potential liability, as defined by Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") of 1980, 42 U.S.C. §§ 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act ("SARA") of 1986, Public Law 99-499.

The Michigan Department of Natural Resources ("MDNR") (the predecessor to the Michigan Department of Environmental Quality ("MDEQ")) completed a Remedial Investigation ("RI") in September 1993 of the Lagoon Source Area (known as "Operable Unit 1") that documented the release or threatened release of hazardous substances, pollutants and contaminants at the Site. A Feasibility Study ("FS") for Operable Unit 1 was completed in May 1995. In July 1997, MDEQ completed a Feasibility Study Addendum. In accordance with the requirements of Section 104(b) of CERCLA, the RI/FS and FS Addendum described the findings on the nature and extent of contamination associated with Operable Unit 1 at the Site. The RI/FS and the FS Addendum considered remedial alternatives necessary to address conditions at the Site. After review of the RI/FS and FS Addendum, MDEQ and U.S. EPA selected a remedial action for the Site. The proposed remedial action is described in the Record of Decision issued by MDEQ and U. S. EPA on June 19, 1998. These documents have been released for public inspection and comment and are available in the Administrative Record at the Bronson Public

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Library, 207 N. Matteson St., Bronson, MI 49028; and at the MDEQ Environmental Response Division, Superfund Section, 301 S. Capitol, Lansing MI 48933.

PRP Determination

Potentially responsible parties ("PRPs") under Section 107 of CERCLA include: (a) current owners and operators of the Site; (b) former owners and operators of the Site at the time of disposal of hazardous substances; (c) persons who owned or possessed hazardous substances and arranged for disposal, treatment, or transportation of such hazardous substances to a facility; and (d) persons who accepted hazardous substances for transportation to a disposal or treatment facility. 42 U.S.C. §§ 9607(a)(1)-(4). U.S. EPA has information indicating that you are a PRP with respect to the Site. By this letter, U.S. EPA notifies you of your potential liability with regard to this matter and encourages you, as a PRP, to reimburse U.S. EPA for its costs incurred to date and to voluntarily perform or finance the response activities that the U.S. EPA has determined or will determine are required at the Site.

Proposed Plan/Record of Decision

Along with the RI/FS and FS Addendum, U. S. EPA and MDEQ issued a Proposed Plan on August 6, 1997 that recommended the appropriate extent of remedial action at the North Bronson Site. The 30-day public comment period on the Proposed Plan began on August 6, 1997. After the expiration of the public comment period, MDEQ and U. S. EPA issued a Record of Decision on June 19, 1998 which selected the appropriate remedial action for the Site. The ROD is appended as Attachment A.

Additional Response Actions

Unless U.S. EPA determines that a PRP or group of PRPs will voluntarily undertake the remedial action necessary at the Site, U.S. EPA will, under Section 104 of CERCLA, undertake the remedial action itself and, under Section 107 of CERCLA, seek reimbursement from PRPs for all response costs incurred in connection with the action taken. Such costs may include, but are not limited to, expenditures for investigation, planning, response and enforcement activities.

Specifically, U. S. EPA is currently planning to conduct the following additional response activities at the Site: (1) design and implement the remedial action for the Site selected and approved U. S. EPA, in consultation with MDEQ; and (2) perform any monitoring, operation and maintenance at the Site after the remedial action is complete. In addition to these response actions, U. S. EPA may, pursuant to its authorities under CERCLA and other laws, determine that other cleanup activities are necessary to protect human health and welfare and the environment. Moreover, under Section 106 of CERCLA, U.S. EPA may order responsible parties to implement relief actions deemed necessary to protect the public health, welfare, or

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environment from an imminent and substantial endangerment because of an actual or threatened release of a hazardous substance at the Site.

Demand for Costs Incurred

U. S. EPA has already undertaken certain actions and incurred certain costs in response to conditions at the Site. These response actions include: (1) performing a preliminary assessment; (2) conducting a site investigation; and (3) funding the Remedial Investigation/ Feasibility Study through a Cooperative Agreement with the State of Michigan. As of May 31, 1997, costs incurred through U. S. EPA funding for response actions at the Site total approximately \$1,849,283.82. In accordance with Section 107(a) of CERCLA, demand is hereby made for payment of the amount specified above plus any and all interest recoverable under Section 107 or under any other provisions of law. U. S. EPA anticipates expending additional funds for response activities, which may include remedial action or oversight of a remedial action, at the Site.

Whether U. S. EPA funds the response action or simply incurs costs by overseeing the parties conducting the response activities, PRPs are liable for these expenditures plus interest. Interest on past costs will accrue from the date of this demand for payment or any earlier demand. Interest on future costs will accrue from the date of expenditure.

Remittance must be made payable to "U.S. EPA Hazardous Substance Superfund" and referencing the U. S. EPA Region and Site/Spill ID 05MI093, the DOJ case number 90-11-2-1311, and the North Bronson Industrial Area Site. The Settling Defendants shall send the check(s) to:

U.S. Environmental Protection Agency
Region 5
Superfund Accounting
P.O. Box 70753
Chicago, Illinois 60673

In the event that you file for protection in a bankruptcy court, U. S. EPA reserves the right to file a proof of claim or an Application for Reimbursement of Administrative Expenses.

Special Notice and Negotiation

Pursuant to Section 122(e) of CERCLA, U. S. EPA has determined that a period of negotiation may facilitate an agreement between the North Bronson PRPs and U. S. EPA for implementation or financing of the response action. Accordingly, U. S. EPA is contacting PRPs identified for the North Bronson Site to resolve their liability with respect to the Site. To assist

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the PRPs in negotiating with U. S. EPA concerning this matter, attached to this letter is a list of the names and addresses of other PRPs to whom this notification is being sent. It should be noted that inclusion on or exclusion from the list does not constitute a final determination by U. S. EPA concerning the liability of any party for remediation of the Site or for payment of past costs.

Upon receipt of this Special Notice, you will have a maximum of sixty (60) days to coordinate with any PRPs and present to U. S. EPA a "good faith offer" to conduct and/or finance the remedial action and to negotiate the terms of a Consent Decree. In accordance with the requirements of Section 122(e)(2) of CERCLA, during this 60-day moratorium, U. S. EPA will not commence remedial action at the Site. U. S. EPA may, however, commence any additional studies or investigations authorized under Section 104(b) of CERCLA, including remedial design, and take any action at the Site should a significant threat to human health or the environment arise during the negotiation period.

A. "Good Faith Offer" of Settlement

A "good faith offer" to conduct or finance the remedial action is a written proposal that demonstrates a PRP's qualifications and willingness to perform the work consistent with the ROD and shall include the following:

- * a statement of willingness to conduct or finance the RD/RA that is consistent with the ROD or a statement that provides a sufficient basis for further negotiations in light of U. S. EPA 's ROD;
- * a detailed "statement of work" or "work plan" identifying how the PRP plans to proceed with the remedial action;
- * a demonstration of the technical capability to undertake the RD/RA. For this demonstration, the PRP should either identify the firm that may actually conduct the work or provide a description of the process that will be used to select a firm;
- * a statement of willingness to reimburse U. S. EPA for past costs as well as costs U. S. EPA will incur to oversee the implementation of the remedial action at the Site;
- * a demonstration of capability to finance the RD/RA;
- * a response to the proposed Consent Decree. If your offer contemplates modifications to the Consent Decree, please make revisions or edits to the draft Consent Decree and submit a version showing any such modifications;

- * a list identifying each party on whose behalf the offer has been made, including the name, address and telephone number of each party; and
- * the name, address and telephone number of the party or steering committee who will represent the PRPs in negotiations or the name, address and telephone number of the party who will represent you in negotiations.

If U. S. EPA receives from you or the North Bronson Site PRPs a written "good faith offer" of settlement within the 60-day calendar period, U. S. EPA may extend the moratorium on commencement of the remedial action up to an additional sixty (60) calendar days. The purpose of this additional time is to allow the PRPs and U. S. EPA a period of time to finalize the settlement.

A proposed Consent Decree is enclosed as Attachment B to assist the PRPs in developing a good faith offer. This draft Consent Decree is not binding on U. S. EPA and is subject to revision and approval by U. S. EPA and the United States Department of Justice. When approved by U. S. EPA and the United States Department of Justice, the Consent Decree will be lodged in federal court.

If a "good faith offer" is not received or settlement cannot be reached within the initial 60-day moratorium, you will be notified in writing of U. S. EPA's decision to end the moratorium. U. S. EPA may then, pursuant to Section 122(e) of CERCLA, proceed to immediately undertake any further action that is authorized by law. U. S. EPA may issue a Unilateral Administrative Order ("UAO") to each PRP requiring performance of the work described in the ROD. If any or all of the PRPs refuse to comply with the UAO, then U. S. EPA may pursue its judicial remedies against such PRPs to compel compliance with the UAO, or U.S. EPA may fund the remedial action and then file a cost recovery claim pursuant to Section 107 of CERCLA against such PRPs.

Administrative Record

In accordance with Section 113 of CERCLA, 42 U.S.C. § 9613, MDEQ established an Administrative Record containing the documents used by MDEQ to select the appropriate response action at the Site. This Administrative Record is available to the public for inspection and comment at the Bronson Public Library, 207 N. Matteson St., Bronson, MI 49028; and at the MDEQ Environmental Response Division, Superfund Section, 301 S. Capitol, Lansing, MI 48933. You may wish to review the Administrative Record to assist you in responding to this letter, but your review should not delay such response beyond the 60-day moratorium period.

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U. S. EPA Notification

As a potentially responsible party, you are encouraged to contact U. S. EPA within ten (10) days of receipt of this letter to indicate your willingness to participate in negotiations to perform or finance the activities described above. The response should indicate the appropriate names, addresses, and telephone numbers for further contact with you. If you are already involved in discussions with state or local authorities, engaged in voluntary cleanup action or involved in a lawsuit regarding the Site, you should continue the activities as you see fit. This letter is not intended to advise or direct you to restrict or discontinue any such activities; however, you are advised to report the status of those discussions or actions in the response to this letter and provide a copy of the response to any other parties involved in those discussions or actions. Your response to this Special Notice letter, including any written proposal to perform the remedial action selected for the Site, should be sent to:

Rosita Clarke-Moreno, SR-6J
Remedial Response Branch
United States Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois, 60604

and

Alan Walts, Esq. C-14J
Office of Regional Counsel
United States Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois, 60604

If U. S. EPA does not receive a timely response, U. S. EPA will assume that you do not wish to negotiate a resolution of your potential responsibility in connection with the Site and that you have declined any involvement in performing response activities. You may, however, be held liable by U. S. EPA under Section 107 of CERCLA for cleanup costs that U. S. EPA incurs with respect to the Site.

Natural Resource Trustee Notification

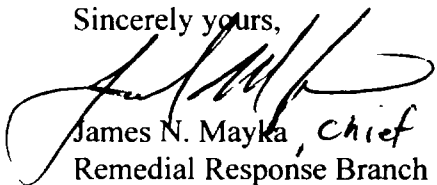
By a copy of this letter, U. S. EPA is notifying the State of Michigan and the natural resources trustees, in accordance with Section 122(j) of CERCLA, of its intent to enter into negotiations concerning implementation of remedial action at the Site, and is also encouraging them to consider participation in such negotiations.

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The factual and legal discussions in this letter are intended solely to provide you with notice and information, and such discussions are not to be construed as a final U. S. EPA position on any matter set forth herein. Due to the seriousness of the environmental and legal problems posed by conditions at the Site, U. S. EPA urges your immediate attention and prompt response to this letter. If you have not already done so, U. S. EPA strongly encourages you to take immediate steps to organize with other PRPs into a committee to negotiate with U. S. EPA to undertake remedial actions at the Site.

If you need further information regarding this letter, you may contact Rosita Clarke-Moreno of the Remedial Response Branch at (312) 886-7251. If an attorney is handling your legal matters or you have any legal questions, please contact Alan Walts of the Office of Regional Counsel at (312) 353-8894. We hope you give this matter your immediate attention.

Sincerely yours,



James N. Mayka, *Chief*
Remedial Response Branch #2

Enclosures

cc: Mary Lynn Taylor
U.S. DOI
Office of Field Solicitor
Three Parkway Center, Suite 385
Pittsburgh, PA 15220

Russell J. Harding, Director
Michigan Department of Environmental Quality
Hollister Building
PO Box 30473
Lansing MI 48909-7973

Robert Reichel, Michigan Attorney General's Office
Natural Resource Division
5th Floor, Knapp's Centre
300 S. Washington Square
Lansing, Michigan 48913

Leslie Bellas
U.S. Department of Justice

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Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611

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bcc: Debra Larsen, MDEQ
Alan Walts, C-14J
Rosita Clarke-Moreno, SR-6J